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SUPREME COURT, U. S.

No. 840

IN THE

Supreme Court of the United States

October Term, 1957

On Appeal from the Supreme Court of the State of Ohio

WARD MILLER,

Appellant,

vs.

DOCTOR ROBERT A. HAINES, DIRECTOR, DEPARTMENT OF MENTAL HYGIENE AND CORRECTION, STATE OF OHIO, ET AL.,

Appellees.

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellees move this Court, pursuant to Rule 16 (1) of the Revised Rules of the Supreme Court of the United States, to dismiss this appeal on the ground that it does not present a substantial federal question and that the judgment rests on an adequate non-federal basis or in the alternative to affirm the judgment of the Franklin County, Ohio, Court of Appeals because it is manifest that the questions on which the decision of this cause depends are so unsubstantial as to not need further argument.

STATEMENT OF THE CASE

Keith Miller, the son of Ward M. Miller, Appellant herein, was born on March 27, 1944. He was afflicted from birth with physical and mental disabilities. Upon the request of his father he was committed to the Columbus State School by the Probate Court of Stark County, Ohio, where he

remained from August, 1956, until his death on January 19, 1964, at which time the original appeal was pending in the Court of Appeals of Franklin County, Ohio. The brief of Appellant filed in the Court of Appeals noted the fact of his death at pages 3 and 4.

This action was originally brought in the Common Pleas Court of Franklin County, Ohio, in 1960, in equity, for injunctive relief praying that all assessments for the care and treatment of his son and owing to the State of Ohio be declared void and the State be forever enjoined from taking any action for the collection of such assessments. The Amended Petition is set out in full at Appendix A. It was alleged that the so-called "pay patient" statutes, Section 5121.01, *et seq.*, of the Ohio Revised Code, are unconstitutional under the provisions of both the Ohio and the Federal Constitutions.

Testimony on the issues was taken in June, 1961. On July 29, 1963, the court denied the injunctive relief sought and determined that the statutes challenged were not unconstitutional either in their inception or in their application to Appellant herein.

On appeal to the Court of Appeals of Franklin County, Ohio, the court affirmed the judgment of the Common Pleas Court, which had denied the injunctive relief sought, but did not adopt the opinion of Judge Harter nor take jurisdiction of and decide the constitutional questions raised. In denying the application for reconsideration on January 17, 1967, the Court of Appeals stated:

> "We did not adopt the opinon of Judge Harter and limited our affirmance of the judgment to the issue in this case, the obligation of a parent for the support of his minor child."

On appeal as of right to the Ohio Supreme Court from this judgment the appeal was dismissed *sua sponte* by the

court on the ground that no substantial constitutional question existed and the court, by a separate order, overruled a motion for an order directing the Court of Appeals of Franklin County to certify its record.

ARGUMENT

This action was brought in equity for injunctive relief. Such relief is an extraordinary remedy granted or denied in the exercise of a sound judicial discretion only in conformity with established equitable principles and considerations. Inasmuch as injunctions must operate in the future, the extent and nature of the relief granted must be determined by the facts which exist at the time of the decree. This rule applies not only to changes which occur during the pendency of the action in the trial court, but also to changes occurring while the action is pending in an appellate court.

The facts which will warrant injunctive relief generally include the showing of a clear legal right, an irreparable injury and the lack of an adequate and complete remedy at law. Furthermore, when injunctive relief is requested against the enforcement of statutes, the mere fact that the statute is alleged to be unconstitutional does not necessarily warrant the exercise of the extraordinary injunctive power.

The death of the child, which occurred in January, 1964, made the total liability of this Appellant determinable. Furthermore, he has an adequate remedy at law, for if these statutes are unconstitutional as has been alleged, he would have a complete defense to an action at law brought for collection of the amounts assessed in accordance with the provisions of said statutes. And where is the "clear right" of Appellant to the relief requested?

That there is a duty of a parent to support a minor, incompetent child is well established by common and statu-

tory law. Appellant herein had the duty to support his minor, incompetent son. Such obligation has existed in Anglo-American jurisprudence for over 360 years and has been made a statutory obligation under the laws of Ohio in Section 3103.03, Ohio Revised Code, which reads:

> "The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him in so far as she is able. If he neglects to support his wife, any other person, in good faith, may supply her with necessities for her support, and recover the reasonable value thereof from the husband unless she abandons him without cause."

The derivation of parental liability for the support of incompetent children was ably discussed in the cases of *People* v. *Hill*, 163 Ill. 186, 46 N.E. 796 and *Beach* v. *District of Columbia*, 320 F.2d 790 (D.C. Cir., 1963). The enactment of the "pay-patient" statutes created no *new* obligation upon the Appellant and as to other named relatives, such obligation was not contrived by the legislature but founded upon an imperfect moral obligation.

Appellant, who has not only a moral duty, but also the legal duty to support his minor son, had the facilities of the state institutions for the mentally retarded available to him for help in the care and treatment of his afflicted child. As a result he was able to restore to normal the home life of his wife and other children and also be assured that proper surveillance, care and training were provided for his incompetent child. He now wishes to shift his full parental responsibility to the state which provided care and treatment for his son in hospitals built, equipped and sustained by the taxpayers of Ohio, the great majority of whom will never receive any direct or immediate benefits from such institutions. He contends that his constitutional

rights have been denied because he had to bear the financial responsibility for the care of his minor son.

The obligation of a parent to support his minor, incompetent child is the basis for the decision of the Court of Appeals in affirming the refusal of the Common Pleas Court to order the injunctive relief prayed for. See Decision, *supra*, page 2.

The decision of the Court of Appeals is supported by the general premises with regard to constitutional questions. It is stated in 16 American Jurisprudence 2d, Constitutional Law, Section 109 at pages 294, 295; Section 113 at page 301; Section 135 at pages 331, 332:

> "The courts invariably give the most careful consideration to questions involving the interpretation and application of the constitution and approach constitutional questions with great deliberation, exercising their power in this respect with the greatest possible caution and even reluctance, and they should never declare a statute void, unless its invalidity is, in their judgment, beyond reasonable doubt. * * *
>
> "It is settled as a general principle that courts will not pass on the constitutionality of an act of the legislature if the merits of the case in hand may be fairly determined otherwise without so doing. Hence if the case may be decided on either one of two grounds and one of these does not involve the constitutionality of a statute, the court will decide it on that ground. Disposition of a constitutional question must be reserved to the last. The court will refuse to decide constitutional questions when the record discloses other grounds for decision, whether or not such other grounds have been properly raised before the court by the parties.
>
> "The rule is well settled that one who voluntarily proceeds under a statute and claims benefits thereby conferred will not be heard to question its constitutionality in order to avoid its burdens. Certainly such a person will not be allowed to retain his advantage or keep his consideration and then repudiate the act as unconstitutional. * * *"

Section 5121.01, *et seq.*, Ohio Revised Code, is substantially similar to the statutes of other states which impose liability for the support of an insane person in a state hospital upon his estate or relatives. The constitutionality of these statutes has been upheld as against objections that they deny equal protection of the laws, are arbitrary or unreasonable, constitute special or class legislation, result in double taxation or are a denial of due process. *Re Peterson,* 157 Or. 696, 74 P 2d 60, 114 ALR 978; *Kough* v. *Hoehler,* 413 Ill. 409, 109 NE 2d 177; *Napa State Hospital* v. *Dasso,* 153 Cal. 698, 96 P 355, 18 LRA NS 643, 15 Ann. Cas. 910; *Bon Homme County* v. *Berndt,* 13 SD 309, 83 NW 333, 50 LRA 351; Anno: 48 ALR 734; *Guthrie County* v. *Conrad,* 133 Iowa 171, 110 NW 454; *State* v. *Bateman,* 110 Kan. 546, 204 P 682; *Beach* v. *District of Columbia, supra; State ex rel Price* v. *Huwe,* 105 O.S. 304; *Dept. of Mental Hygiene v. McGilvery,* 50 Cal. 2d 742, 329 P 2d 689.

The sole case cited as authority for this appeal is the California case of *Dept. of Mental Hygiene* v. *Kirchner, Administratrix,* 380 U.S. 194, and the other decisions reported with regard to the same case. The ultimate holding in that case was that the "pay-patient" statutes of California were unconstitutional, being in derrogation of the California Constitution, Article I, Sections 11 and 21, as a general law requiring uniform operation.

It is denied that the decision of the Supreme Court of California in the case of *Department of Mental Hygiene* v. *Kirchner,* 43 Cal. Rptr. 329, 400 P 2d 321, is authority for the determination of this case. In that case the Department brought a claim against an intestate's estate for the support of the intestate's mother in a state mental institution. At the time the mother was living and had over $11,000 in her own guardianship account. The California Supreme

Court held that a statute which imposes upon one adult, because of a family relationship, a duty to support another adult who is confined in a mental institution is unconstitutional, being in violation of the California Constitution, Article I, Sections 11 and 21. This case differs from the one herein presented for the following reasons: 1) that case involved the liability of an adult child for the support of a parent where we are considering the liability of a father for the support of a *minor* son; 2) the liability in California is joint, severable, and unconditional while no such language appears in Ohio statutes and such have been recognized to create a secondary liability as to relatives; and 3) the court found that a relative could be "denuded" of his assets without any consideration of ability to pay while the Ohio statutes clearly recognize the ability to pay for all considered liable.

Although that case does not answer the questions herein presented, Appellees feel it necessary to mention the following objections to the soundness of this decision: 1) contrary to the opinion of the court a case had been previously decided on this constitutional question (*Beach* v. *District of Columbia,* 320 F. 2d, 790 [D.C. Cir, 1963]); 2) the court did not give proper consideration to prior California cases such as *Dept. of Mental Hygiene* v. *McGilvery,* 50 Cal. 2d 742, 329 P. 2d. 689; 3) the court gave no effect to the benefits to the individual and the family for the care and treatment of the insane, which is contrary to many pronouncements of the courts; and 4) the court arbitrarily found no rational basis for such classification. As to this latter criticism it would seem that this subject is one for determination by the legislature, not the courts. For the court to say that a family relationship with its natural moral obligations does not provide a rational basis for classification appears

inconsistent with the prevailing view that state statutes in equal protection cases should be interpreted insofar as possible to be predicated upon legislative consideration.

The Ohio courts have examined various aspects of these statutes and found them to be constitutional. *State ex rel Price* v. *Huwe, supra; State* v. *Webber, Adms.*, 163 OS 598; *Rice, Guardian* v. *State*, 14 OA 9.

In view of the holdings of the Ohio courts, if *Kirchner* is now the law in California without benefit of the Fourteenth Amendment, then the present decisions are constitutional in Ohio, even in consideration of the Fourteenth Amendment, where our constitutional interpretation has adequately covered the problem of classification; *McGowan* v. *Maryland*, 366 U.S. 420, 17 O.O. 2d 151, 6 L. Ed. 2d 393, 81 S. Ct. 1101, wherein it is stated:

> "The Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others, and the constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective."

In spite of the fact that there has been a great deal of public interest generated by the *Kirchner* case and others, it is nevertheless contended that the facts of this case and the issues presented herein do not warrant the consideration of this Court of the constitutional questions allegedly raised. The public interest which has been generated is not so great that this Court needs to or should take jurisdiction of constitutional questions which are irrelevant to a just decision based upon other grounds.

CONCLUSION

It is respectfully submitted that this Motion to Dismiss should be sustained for the reasons set forth herein, or in the alternative, that the Court should Affirm the decision of the Ohio courts.

Respectfully sumitted,

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